

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**NICOLE L. CALL
DOCKET NO. 29-20020198**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Thursday, May 2, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge, acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

The Petitioner, Nicole L. Call, appeared Pro Se. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On March 5, 2002, the Petitioner was prohibited from associating with charity gaming activities in Indiana for a period of three (3) years. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Fraternal Order of Eagles Lodge #3164.
- 2) The Department's Criminal Investigation Division report regarding the Fraternal Order of Eagles Lodge #3164 found that the organization had violated the following statutes, IC 4-32-9-15, IC 4-32-9-25, and 45 IAC 18-3-2.
- 3) On August 9, 2001, the Department revoked the Eagles charity gaming license.
- 4) On March 5, 2002, the Department prohibited Petitioner from associating with charity gaming activities in Indiana for a period of three (3) years.

FINDINGS OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Fraternal Order of Eagles Lodge #3164 (hereinafter referred to as Eagles). (Department Exhibit A).

- 2) The Department's investigators spoke with several Trustees of the Eagles who named Jeff Widman as the person who ran their charity event and provided the workers and security. (Department Exhibit B).
- 3) The Trustees told the Department's investigators that Mr. Widman offered to pay the Eagles five thousand dollars (\$5,000) to run their festival and he would then keep the remainder of the profits. (Department Exhibit B).
- 4) The Trustees provided the Department with a list of the individuals who were to work the festival. (Record at 8).
- 5) The Petitioner was on a list provided by the Trustees as one of the scheduled workers. (Record at 10).
- 6) The Department's Criminal Investigation report regarding the Eagles found that they had violated the following statutes, IC 4-32-9-15, IC 4-32-9-25, and 45 IAC 18-3-2. (Department Exhibit B).
- 7) On March 5, 2002, the Department determined that the following sections of the Indiana code were violated: IC 4-32-9-15, IC 4-32-9-25(a), IC 4-32-9-28, and IC 4-32-9-29. (Department Exhibit B).
- 8) According to the Department's investigative report, Mr. Widmann delivered and set-up the gaming equipment during the afternoon of August 2, 2001 the day before the festival was to begin. (Department Exhibit B).
- 9) According to the Eagles' Trustees, the festival was shut down around midnight on August 3, 2001 which was the first day of the festival. (Department Exhibit B).
- 10) The Department's investigator testified under oath that on August 3, 2001 she interviewed one of the Trustees of the Fraternal Order of Eagles Lodge #3164 and that this individual confirmed that a verbal contract had been entered into between the Eagles Lodge and a Mr. Jeff Widmann. (Record at 6).
- 11) According to the Trustee, Mr. Widmann would act as the operator, and provide all the workers and security for their event. Mr. Widmann also agreed to set up and tear down the equipment. On the last day of the festival the Eagles would get five thousand dollars (\$5,000) and Mr. Widmann would keep the remaining profits. (Record at 6 and 7).
- 12) The Department's investigation report states that the Petitioner was one of the individuals who was supposed to work the event, and therefore, they recommend Petitioner be suspended from participating in charity gaming activities for one (1) year. (Department Exhibit B).
- 13) The Department then notified Petitioner by letter that she was prohibited from associating with charity gaming activities in the State of Indiana for a period of three (3) years.
- 14) Petitioner stated that she was not present at the festival. (Record at 12).
- 15) The Department's investigator stated under oath that she did not see Petitioner at the event. (Record at 11).
- 16) Petitioner stated that she was not a member of the Eagles. (Record at 12).
- 17) At hearing, the Department provided a membership application allegedly showing that the Petitioner applied to join the Eagles. (Department Exhibit A).
- 18) The application for membership contains no signature.
- 19) According to the Department's investigator, the Petitioner's name was not on the documents provided to the Department showing her as a potential worker. (Record at 8).
- 20) Petitioner argues that the membership application provided by the Eagles (Department's Exhibit A) was filled out by someone other than herself, and that the name on the application (Nikki Call) was incorrect and the handwriting was not hers. (Record at 11).

- 21) Petitioner also contends that the street address on the application is spelled incorrectly as E-B-B-Y. The actual street name is spelled E-B-Y. Petitioner states that she would not spell her own street name wrong. (Record at 11).
- 22) Departmental records show Petitioner's street name as Eby.
- 23) Petitioner provided records and letters verifying that she worked all day on August 3, 2001, and that after work she went to the home of an acquaintance for the weekend. (Petitioner Exhibit 1).
- 24) Petitioner admitted under oath that her name was supplied to organizations that were conducting gaming events, and Petitioner would then participate as a worker at those events if she was a member of that particular organization. (Record at 12).
- 25) Petitioner stated that she would only work events where she was a member. (Record at 13).

STATEMENT OF LAW

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) The Department's administrative hearings are conducted pursuant to IC § 6-8.1-5-1 et seq. (See, Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)).
- 3) Pursuant to 45 IAC 15-5-3(b)(7), "The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act" (renamed the Administrative Order and Procedures Act).
- 4) Even if the Department were bound by the Administrative Orders and Procedures Act (AOPA), the rules clearly state that hearsay evidence that is properly objected to and does not fall with an exception to the hearsay rule may not form the sole basis of a resulting order. The AOPA does not say that the evidence cannot be heard, presented, or considered.
- 5) IC 4-32-9-27 states, "An operator or a worker may not directly or indirectly participate, other than in a capacity as operator or worker, in an allowable event..."
- 6) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."
- 7) According to IC 4-32-9-29, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."
- 8) IC 4-32-12-1(a) (4) provides in pertinent part, "The Department may suspend... an individual ...for any of the following: (1) Violation of a provision of this article or of a rule of the department...(4) Commission of fraud, deceit, or misrepresentation."
- 9) IC 4-32-12-3 states, "In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
 - (1) Suspend or revoke the license.
 - (2) Lengthen a period of suspension of the license.
 - (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified

organization.

(4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.”

CONCLUSIONS OF LAW

- 1) The Department’s findings are prima facie evidence that the Department’s claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made.
- 2) The Department contends that Petitioner’s name was supplied to organizations that were conducting gaming events, and she would then participate as a worker at those events in violation of Indiana charity gaming law.
- 3) The Department argues that its decision to bar Petitioner from participating in charity gaming for a period of three years is based upon the fact that Petitioner’s name appears on a list of proposed workers. These workers were supposed to work at an event sponsored by an organization that Petitioner was not a member of. This alone, according to the Department, is sufficient to show that Petitioner is or had violated Indiana gaming law in the past and that Petitioner is currently part of a scheme to defraud the Department, even though Petitioner never worked the event in question.
- 4) The Department must establish a factual basis in order to substantiate its decision.
- 5) The Department presented no evidence at hearing as to which organizations Petitioner belonged to or for how long she had been a member.
- 6) The Department presented no evidence at hearing as to whether Petitioner participated as a worker at any events.
- 7) The Department presented no evidence at hearing concerning whether or not Petitioner was a qualified worker.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner’s protest is sustained.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.

- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

**THIS ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA
DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN
SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.**

Dated: _____

Bruce R. Kolb / Administrative Law Judge